

REMARKS

This amendment is being filed in conjunction with a Request for Continued Examination.

Claims 1-15, 17-42, 44-69, and 71-87 are pending, with claims 1, 28, 55, 85-87 being independent. Claims 16, 43, and 70 remain cancelled. New claims 82-87 have been added. No new matter is being added.

This response first addresses the Aharoni rejection and then addresses the Aharoni in view of Gupta rejection.

Aharoni Rejection

Claims 1-15, 17-20, 22-42, 44-47, 49-69, 71-74, and 76-81 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Aharoni et al. (6,014,694). Applicants have amended independent claims 1, 28, and 55 to obviate the § 102(e) rejection.

As amended, independent claim 1 recites a method of communicating content that includes, among other features, automatically determining an available bandwidth between a recipient and a provider, selecting among content of varying formats having distinct media types to be communicated between the recipient and the provider based on the available bandwidth determined, and communicating the selected content between the provider and the recipient. Applicants respectfully request reconsideration and withdrawal of the rejection because Aharoni fails to describe or suggest selecting among content of varying formats having distinct media types to be communicated between the recipient and the provider based on the available bandwidth determined, as recited in amended independent claim 1.

Aharoni does not select among content of varying formats having distinct media types. Rather, Aharoni describes selecting among a plurality of different frame types, each having the same media type. Specifically, Aharoni describes compressing video into frames of multiple levels of compression and selecting one of the frame formats to communicate based on the estimated network channel bandwidth. See e.g. Aharoni, col. 2, lines 57-62 (stating "each frame

comprising a plurality of levels, each level corresponding to a particular degree of compression...selecting one of the plurality of levels of each frame to transmit over the network channel in accordance with the bandwidth estimate"). Thus, Aharoni's patent maintains the same media type (i.e. MPEG video) for each of the frame types – as it is not the media type, but the level of frame compression that is varied by Aharoni based on the network bandwidth.

In rejecting the prior art version of claim 1, the Office Action references several specific portions of Aharoni. Relevant citations to Aharoni are addressed below to further explain Aharoni's failure to disclose "selecting among content of varying formats having distinct media types ... based on the available bandwidth determined," as required by claim 1.

Specifically, the Office Action noted that "Aharoni teaches where the raw video source can be, for example, a non compressed AVI file, a non-compressed QuickTime file or a compressed MPEG audio/video file. (col. 8, lines 44-46)." See Office Action of May 18, 2005, at page 3. However, Applicants believe that the quoted section in Aharoni is still deficient with respect to its failure to disclose "selecting among content of varying formats having distinct media types ... based on the available bandwidth determined," as recited in claim 1. First, all of the video formats taught by Aharoni still belong to the same type of media – i.e. streaming video, specifically AVI, QuickTime, or MPEG. Second, Aharoni does not teach selecting between AVI, MPEG, or other streaming formats based on the available bandwidth determined. Here, Aharoni merely recites these formats as examples of the known video streaming formats.

By contrast, claim 1 recites selecting among content of varying formats having distinct media types... based on the available bandwidth determined. In one claimed implementation, for example, selecting among content of varying formats having distinct media types includes selecting between a still picture format and a video format depending upon the available bandwidth.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the § 102(e) rejection of amended independent claims 1 and its respective dependent claims.

Similarly, each of independent claims 28 and 55 recites an arrangement in which content is selected from among content of varying formats having distinct media types based on the

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available determined bandwidth. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of amended independent claims 28 and 55 and their respective dependent claims for the reasons discussed above with respect to amended independent claim 1.

Aharoni in view of Gupta Rejection

Claims 21, 48, and 75 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aharoni in view of Gupta et al. (6,622,171).

Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection because Gupta does not remedy the failure of Aharoni to describe or suggest selecting among content of varying formats having distinct media types to be communicated based on the available bandwidth, as recited in amended independent claims 1, 28, and 55.

Conclusion

Enclosed is a check for \$1660 of which \$790 is for the Request for Examination fee and \$600 is for the excess claim fees. During the pendency of this case, please apply any deficiencies or credits to deposit account 06-1050.

Respectfully submitted,

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